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State v. Ciccone Augmentation Record Dckt. 36877

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In the Supreme Court of the State of Idaho

STATE OF IDAHO,

Plaintiff-Respondent,

v.

ALBERT A. CICCONE,

Defendant-Appellant.

ORDER GRANTING IN PART
AND DENYING IN PART
APPELLANT'S MOTION TO
AUGMENT THE RECORD AND
TO SUSPEND THE BRIEFING
SCHEDULE

NO. 32179

36877

A MOTION TO AUGMENT THE RECORD AND SUSPEND THE BRIEFING SCHEDULE AND STATEMENT IN SUPPORT THEREOF was filed by Appellant on October 11, 2007; therefore, good cause appearing,

IT IS HEREBY ORDERED that Appellant's MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED, in part, and the District Court Reporter shall prepare and lodge the transcripts listed below with the District Court Clerk within twenty-eight (28) days from the date of this Order, and the District Court Clerk shall immediately serve counsel and file the transcripts with this Court. Any corrections shall be filed with this Court as provided by I.A.R. 30.1:

1. Transcript of the District Court Arraignment, held on February 2, 2004 [Court Reporter, Nicole Omsberg];
2. Transcript of the Pretrial Conference, held on June 21, 2004 [Court Reporter, Nicole Omsberg];
3. Transcript of the Motion to Continue, held on July 19, 2004 [Court Reporter, Nicole Omsberg];
4. Transcript of the Motion for Permissive Appeal, held on August 16, 2004 [Court Reporter, Nicole Omsberg];
5. Transcript of the Motion to Dismiss Count II, held on September 7, 2004 [Court Reporter, Vanessa Starr];
6. Transcript of the Motion for Permissive Appeal, held on October 18, 2004 [Court Reporter, Nicole Omsberg];

AUGMENTATION RECORD

7. Transcript of the Pretrial Conference, held on December 20, 2004 [Court Reporter, Nicole Omsberg];
8. Transcript of the Motion for Judgment of Acquittal/New Trial, held on March 8, 2005 [Court Reporter, Nicole Omsberg]; and
9. Transcript of the Sentencing Hearing, held on March 21, 2005 [Court Reporter, Nicole Omsberg].

IT IS FURTHER ORDERED that Appellant's MOTION TO SUSPEND THE BRIEFING SCHEDULE be, and hereby is, GRANTED and the proceedings in this appeal are SUSPENDED until the transcript(s) listed above are filed with this Court, at which time the due date for filing Appellant's Brief shall be reset which shall be thirty-five (35) days thereafter.

IT IS FURTHER ORDERED that Appellant's MOTION TO AUGMENT be, and hereby is, GRANTED and the appeal record shall include the documents listed below, copies of which accompanied the motion:

1. State's Notice of Intent to Use 404(b) Evidence, filed July 7, 2004, and
2. Affidavit of C.J. Nemeth, referenced in the Motion for Order to Provide Interview Room (R., pp.31-32).

IT IS FURTHER ORDERED that the MOTION TO AUGMENT THE RECORD as to the transcripts listed below be DENIED for the reason that these transcripts have been received and are included in the record on file with this court:

1. Transcript of the Preliminary Hearing, held on October 30, 2003 [Court Reporter, Amy Cole];
2. Transcript of the Preliminary Hearing, held on November 19, 2003 [Court Reporter, Amy Cole];
3. Transcript of the Preliminary Hearing, held on December 12, 2003 [Court Reporter, unknown];
4. Transcript of the Preliminary Hearing, held on December 29, 2003 [Court Reporter, Amy Horsley];

5. Transcript of the Preliminary Hearing, held on January 12, 2004 [Court Reporter, unknown].

DATED this 20 day of December, 2007.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
Reporter, Nicole Omsberg
Reporter, Vanessa Starr

AARON BAZZOLI
ELMORE COUNTY PROSECUTING ATTORNEY

190 South 4th East
 Post Office Box 607
 Mountain Home, Idaho 83647
 TELEPHONE: (208) 587-2144 ext. 503
 FAX: (208) 587-2147
 ISB#5512

RECEIVED

OCT 11 2007

STATE APPELLATE COURT
 PUBLIC DEFENDER

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

STATE OF IDAHO)	
)	Case No. CR-2003-0004441
Plaintiff,)	
)	
vs.)	NOTICE OF INTENT TO USE
)	RULE 404(b) EVIDENCE
ALBERT A. CICCONE)	
)	
Defendant.)	

COMES NOW, The State of Idaho, by and through the Elmore County Aaron Bazzoli, Elmore County Prosecuting Attorney and hereby moves this Court to Notice of intent to use other crimes, wrongs or acts in the prosecution of this matter as set forth in I.R.E. 404(b).

I.R.E. 404(b) states that "evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident provided that the prosecution in a criminal case shall file and serve notice reasonably in advance or trial...of the general nature of any such evidence it intends to introduce at trial."

ORIGINAL

In this case, the State has disclosed several witnesses and witness statements to Defendant which describe the Defendant and victim's marriage and actions and statements made during the marriage between the parties.

Potential Witnesses: Mike Almond, Jason Delion, Jessica Eddy, Kathy Figueredo, Curtis Jackson, Edna Lacey, Michala Larios, Eric Parker, Thomas Reedy, Christopher Terry, Jessica Terry.

Nature of testimony: Defendant was controlling and manipulative regarding the Decedent. He often times would lock her phone and keys away from her so she could not call or see her friends. On a couple of occasions, they would fight and he would kick her out of the car and make her walk home or to the hospital. He was abusive and called the victim demeaning names. He stated that he wanted a divorce and that the victim and Defendant were separated at the time of the crime. On one occasion Defendant shoved victim down in the street. Victim was seen with bruises during the short marriage.

Relevancy: Defendant is charged with two counts of first degree murder by definition requiring the State to prove specific intent to kill and that the means of death was premeditated and not an accident. The above testimony will provide the jury with the nature of the relationship between Defendant and the victim was one of abuse and animosity and therefore Defendant intentionally killed his wife. The fact that Defendant kicked the victim out of his car and made her walk previously helps explain and contradict the Defendant's version of the events that evening as well. The evidence goes directly to motive, intent, knowledge, and absence of mistake or opportunity.

DATED This 7th day of July 2004

AARON BAZZOLI
ELMORE COUNTY PROSECUTING ATTORNEY

BY: A Bazzoli
Aaron Bazzoli
Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July, 2004, I served a copy of the attached document to the following parties by facsimile:

Terry S. Ratliff
ATTORNEY AT LAW
290 South 2nd East
Mountain Home, ID 83647

DATED this 7th day of July, 2004

AARON BAZZOLI
ELMORE COUNTY PROSECUTING ATTORNEY

BY: A Bazzoli
Aaron Bazzoli

34

**E.R. FRACHISEUR
ELMORE COUNTY PUBLIC DEFENDER**

525 East Jackson
Mountain Home, Idaho 83647
Telephone No. 587-9103
Facsimile No. 587-2094
Idaho State Bar No. 1388

OCT 11 2007

*M. Linder*JAIL DEPT
DISTRICT COURT

**TERRY S. RATLIFF
RATLIFF LAW OFFICES CHTD.**

290 South 2nd East
Mountain Home, Idaho 83647
Telephone No. 587-0900
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Idaho State Bar No. 3598

RECEIVED

OCT 11 2007

STATE OF IDAHO
PUBLIC DEFENDER

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

STATE OF IDAHO)

Plaintiff,)

-vs-)

ALBERT ARNOLD CICCONE,)

Defendant.)

Case No. CR-2003-4441

AFFIDAVIT OF CJ NEMETH

STATE OF IDAHO)

County of Elmore)

ss.

CJ NEMETH, being first duly sworn, deposes and says:

1. My Name is CJ Nemeth and I operate Evidence Investigations. I assist the Elmore County Public Defender's Office on a contract basis.

2. On October 28th, I went to the jail at the request of the

AFFIDAVIT OF CJ NEMETH- 1

ORIGINAL

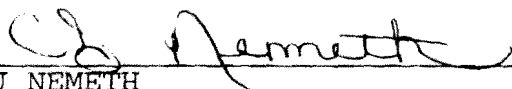
Attorney's to talk to a client.

3. Your Affiant requested a secure room to talk to said client. I went to the downstairs interview room where the attorneys and myself has had previous attorney/client visits with Mr. Ciccone. The Jailer (Tom) brought the female prisoners into the room.
4. Your Affiant asks her if she had any knowledge if any female Prisoner could hear conversations from this room. She stated yes. That the girls in the cell can hear all conversations in that room from their cell. She did not want to talk to me in that room as she stated that they all heard Mr. Ciccone talk about what happened on his case.
5. Your Affiant went to talk with Captain McCallum who advised me that they did not have any real secure rooms except the interview room, which contains the audio and video recorder. I asked if there was a guarantee that no one would turn on the devices and Captain McCallum stated he could not, but he felt no one would but he could not speak for everyone.
6. Your Affiant then asked Captain McCallum if I could go into the women's cell. He allowed me to go in and listen to see if I could hear plainly or if it was muffled. Tom Robbins was in the other room on the other side of the women's cell in the interview room. He spoke my name and asked if I could hear him. He spoke in a low voice.

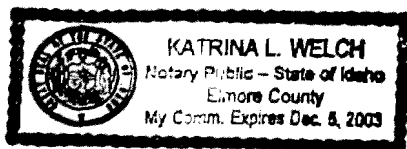
7. Both Captain McCallum and your Affiant could hear all words plain as day; you could even hear him walk out of the room.
8. The female who your Affiant was interviewing told me that all the females in the cell heard the Attorneys conversation as they were listening to it, as it was a murder case.

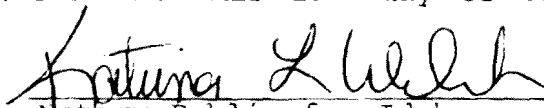
Further your affiant sayeth not.

DATED This 29th day of October, 2003.


CJ NEMETH
Affiant

SUBSCRIBED AND SWORN To before me this 29th day of October, 2003.




Notary Public for Idaho
Residing at Mountain Home, Idaho
My Commission Expires: 12/05/03